

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Published May 26, 2006]

NOTICE OF PROPOSED RULEMAKING

Watercourse Rules Streamlining, 2006

The proposed changes to the Forest Practice Rules are related to amending the "Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures" and "Protection and Restoration in Watersheds with Threatened or Impaired Values (T/I)". The amendments provide regulatory relief to landowners harvesting timber near streamcourses. Regulatory relief, or streamlining, is provided by 1) allowing sample marking of watercourse boundaries and harvest trees for Nonindustrial Timber Management Plans (NTMP); 2) waiving certain T/I rules for watercourse reaches where anadromous salmonids are not present and cannot be restored, as determined by State Agency participating in review of the harvest plan; 3) allowing harvesting of dead or dying trees in T/I watercourses under emergency notices filed under the Forest Practice Rules, with specific circumstances to protect large woody debris recruitment.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

Amend:

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| <u>§ 916.5(e) [936.5(e), 956.5(e)]</u> | Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures [All Districts] |
| <u>§ 916.9 [936.9, 956.9]</u> | Protection and Restoration in Watersheds with Threatened or Impaired Values [All Districts] |

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, July 12, 2006, starting at 8:00 a.m., at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street,

Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, July 10, 2006. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Reducing the regulatory burden to forest landowners, particularly small forest landowners, while retaining a high level of environmental protection is necessary for keeping large forested lands undeveloped and providing ecosystem services such as open space. The undeveloped forest setting provides numerous benefits to society and will have similar benefits for future generations.

To help offset the unintended consequences of loss of forest land to other non-forestry settings, the Board continuously considers opportunities to reduce regulatory burden to landowners while retaining a high level of environmental protection. In an effort to improve the watercourse regulations, suggestions were made to the Board in 2004 to modify some watercourse regulations that were not practical or not likely to result in additional environment protection for watercourses. Several suggested changes included:

- **WLPZ marking and tree harvest identification prior to the preharvesting inspection [14 CCR 916 .5(e)[936.5(e), 956.5(e)]:** This requirement is onerous and unnecessary as designating WLPZ boundaries prior to the preharvest inspection results in the ribbon or marking paint to degrade long before the actual harvest occurs, resulting in the need to remark the WLPZ boundary prior to timber harvesting operations. This redesignation represents an additional cost to landowners which is not necessary.
- **Threatened and Impaired Watershed regulations apply to all Class I reaches of the designated watershed, regardless of the presence of listed salmonids [(§ 916.9[936.9, 956.9]):** All portions of the T/I designated watershed receive the same level of protection regardless of the presence of salmonids intended to be protected under the goals of the T/I rules. For example, watercourses with introduced fish or reaches above barriers (e.g. dams, waterfalls) receive the same salmonids protection even though these reaches do not contain salmonids species intended to be protected by the T/I rules. Applying T/I rules to locations determined to not support species targeted for protection by the T/I rules adds unnecessary cost burden to landowners.

- **Prohibition on removal of limited amounts of dead and dying trees in T/I watercourses is overly restrictive [14 CCR 916.9(s)[936.9(s), 956.9(s)]:** Existing T/I rules do not allow any tree removal in watercourses under emergency notices and limited amounts under activities determined to be “exempt” from filing a Timber Harvest Plan under the Forest Practice Rules. This unnecessarily limits the removal of dead and dying trees near watercourse. The wide landscape buffer required under the T/I rules can contain large numbers of dead trees, particularly in a situation where catastrophic tree mortality has occurred (e.g. fire or insect damage). The outright prohibiting of harvest can create an overabundance of dead and dying trees and results in a level of protection that is unnecessarily high and therefore costly to landowners.

SPECIFIC PURPOSE OF THE REGULATION

The proposed changes to the Forest Practice Rules are to make changes to the WLPZ and T/I regulations to reduce the economic impact to landowners while retaining a high level of environmental protection.

Subsection 916.5(e)[936.5(e), 956.5(e)] modifies the existing rule language to allow sample identification of WLPZ boundaries for NTMPs. This section also modifies the existing rule language to allow trees harvested in the WLPZ to be sample marked at the time of preharvest inspection under NTMPs and other plans outside of T/I watersheds, instead of marking all trees.

Subsection 916.9 (f)[936.9(f), 956.9(f)] modifies T/I regulations to specify that several standards for T/I Watersheds [(f)(1) minimum width for Class I streams; (f)(2) overstory canopy for Class I waters; (f)(3)(A-C) impacts and from harvesting in Class I waters and Class I road crossing limitations; (f)(4) large woody debris requirements; and (f) (5) inner gorge harvesting limitations apply to those watercourse reaches where anadromous salmonids are always or seasonally present and to those watercourse reaches where anadromous are limited, but can be feasibly restored as identified by a Department of Fish and Game (DFG) biologist or as further identified and refined during preparation and review of the plan.

Subsection 916.9 (g)[936.9(g), 956.9(g)] modifies the term used for the name of Geologists required for plan review.

Subsections 916.9 (h-u)[936.9(h-u), 956.9(h-u)] are non substantive changes for purposes of re-lettering the provision sections for clarity.

Subsection 916.9 (p)[936.9(p), 956.9(p)] eliminates the prohibition on harvesting in T/I WLPZs under emergency notices. Subsection (p)(6) clarifies that

harvesting in T/I WLPZs under exemptions can be conducted when recommended in writing by the DFG.

Subsection 916.9 (q)(1-7)[936.9(q)(1-7), 956.9(q)(1-7)] states the conditions under which tree harvesting in a T/I WLPZ can occur under emergency notices.

Subsection 916.9 (r)[936.9(r), 956.9(r)] adds Program Timber Environmental Impact Reports as a type of plan that can be used to include salvage logging in a T/I WLPZ. Subsection 916.9 (r)(1)[936.9(r)(1), 956.9(r)(1)] states that prohibitions to salvage logging do not apply to emergency operations under 14 CCR 1052.

Note: Existing section 916.9 (v)[936.9(v), 956.9(v)] states that section 916.9 [936.9, 956.9] expires on December 31, 2006. While this section is not proposed for amendments under this proposal, changes under this regulation are dependant on a related regulation, Watershed with Threatened or Impaired Values Extension 2006, to be adopted by the Board prior to expiration of section 916.9 [936.9, 956.9].

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business. The amendment generally provides a wider range of in-field plan preparation options for NTMPs and a wider range of harvesting opportunities in T/I watersheds. Both factors should contribute in positive ways to the economic benefits of landowners harvesting timber.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the Board web site at:

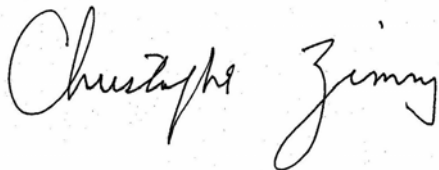
http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection

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